



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 14 2009

REPLY TO THE ATTENTION OF:
WW-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Stephen A. Studer, Esq.
Krieg-Devault, LLP
520 Park Place Court, Suite 300
Mishawaka, Indiana 46454-3582

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

Re: Consent Agreement and Final Order – Five Star Mining, Inc.
(Docket No. CWA-05-2009-0002)

Dear Mr. Studer:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) we filed on January 14, 2009, resolving the matters alleged therein. Your civil penalty payment is due within 30 days of January 14, 2009 – the effective date of this CAFO. Please refer to Billing Docket No. 2750943W001, and the case Docket Number above when remitting payment. Payment obligations and instructions are noted in paragraphs 7 and 8 of the CAFO.

Thank you for resolving this matter. Should you have any questions, please do not hesitate to contact me at (312) 886-0124 or Jeffrey Trevino, Associate Regional Counsel at (312) 886-6729.

Sincerely yours,

Gregory T. Carlson, Enforcement Officer
Watersheds and Wetlands Branch
U.S. EPA - Region 5

Enclosure

cc: George DeLauncey (w/ encl.), USACOE, P.O. Box 489, Newburgh, IN 47629-0489
Doug Shelton (w/ encl.), USACOE, Louisville, KY
James Robb (w/ encl.), IDEM, Indianapolis, IN
Jeff Trevino (w/ encl.), ORC, C-14J

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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PROTECTION AGENCY

In the Matter of:) Docket No. CWA-05-2009-0002
)
Five Star Mining, Inc., Petersburg,) Proceeding to Assess a Class II Civil Penalty
Indiana,) Under Section 309(g) of the Clean Water Act,
) 33 U.S.C. § 1319(g).
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

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CONSENT AGREEMENT

I. Preliminary Statement

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1. This is an administrative action commenced and concluded pursuant to Section 309(g) of the Clean Water Act, ("the Act"), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The Complainant is by lawful delegation the Director, Water Division, Region 5, U.S. Environmental Protection Agency.
3. The Respondent is Five Star Mining, Inc., Petersburg, Indiana.
4. Respondent admits the Administrator of the United States Environmental Protection has jurisdiction of this proceeding pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319, and the regulations at 40 C.F.R. § 22.38, and pursuant to 40 C.F.R. § 22.18(b)(2).

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interests and in the public interest.

II. Specific Factual Allegations

7. Over several days on or about June 1, 2005, Respondent added approximately 4,207 cubic yards of dredged spoil from earthmovers and bulldozers into approximately 7.1 acres of forested wetlands, abutting Conger Creek, (now known as Pond I), at Prosperity Mine, 6594 West State Road 56, Petersburg, Indiana, (“the Site”), whose water flowed approximately 5.2 miles into the White River, whose water flowed approximately 27.1 miles into the Wabash River, an interstate water.

8. On or about June 1, 2005, Respondent was a corporation.

9. Therefore, Respondent was a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

10. Respondent's additions were “discharges” as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).

11. Therefore, Respondent “discharged” as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).

12. Dredged spoil is a “pollutant” as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).

13. Therefore, Respondent discharged "pollutants" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

14. Earthmovers and bulldozers are rolling stock.

15. Therefore, Respondent discharged pollutants from a "point source" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

16. The 7.1 acres of forest at the Site were inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances did support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

17. Therefore, the 7.1 acres of forest at the Site were "wetlands" as defined by the regulation at 40 C.F.R. § 232.3.

18. The wetlands abutted Conger Creek.

19. Therefore, the wetlands were adjacent to Conger Creek as defined by the regulation at 40 C.F.R. § 232.3.

20. The waters of Conger Creek flowed approximately 5.2 miles into the White River, whose waters flowed approximately 27.1 miles into the Wabash River.

21. The Wabash River flowed along several states.

22. Therefore, the Wabash River was an "interstate water" as defined by the regulation at 40 C.F.R. § 232.3.

23. Therefore, Respondent discharged pollutants from a point source into "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

24. Therefore, over several days on or about June 1, 2005, Respondent was a person who discharged pollutants from point sources into navigable waters in violation of Section 301 of the Act, 33 U.S.C. § 1311.

25. Each day the pollutants remained in navigable waters constituted an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.

III. Stipulations

26. Respondent neither admits nor denies the specific factual allegations of this Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(2).

27. Respondent consents to the assessment of the civil penalty of the Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(2).

28. Respondent waives any right to contest the allegations of the Consent Agreement and Final Order and its right to appeal the proposed final order accompanying the Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(2).

IV. Civil Penalty

29. Respondent agrees to pay a civil penalty of \$75,000.00 within thirty (30) days of the effective date of this CAFO. Respondent agrees to pay the penalty by sending a cashier's or certified check, payable to the order of the U.S. Treasury:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

30. Respondent's cashier's or certified check must note the Name, Docket No., and Billing Document No. 2750943 W001 of this action.

31. Respondent must include with its cashier's or certified check a transmittal letter stating the name of this action, Respondent's complete address, the Docket No. of this action, and the Billing Document No. of this action. Respondent must send copies of each check and transmittal letter to:

Regional Hearing Clerk
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (E-13J)
Chicago, IL 60604-3511

Gregory T. Carlson
U.S. Environmental Protection Agency
77 West Jackson Boulevard (WW-16J)
Chicago, IL 60604-3511

Jeffery M. Trevino
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, IL 60604-3511

32. This civil penalty is not deductible for federal tax purposes.

33. If Respondent fails to pay the civil penalty timely, Complainant may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and Complainant's enforcement expenses for the collection action.

34. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15.00 handling charge each month that any portion of the penalty due is more than thirty (30) days past due. Complainant will assess a six percent (6%) per year penalty on any principal amount not paid timely pursuant to this CAFO.

35. This CAFO constitutes a complete and full settlement of, and resolves Respondent's liability with prejudice for, the violations alleged in the Complaint.

36. This CAFO does not affect the right of Complainant or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

37. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local, laws and regulations.

38. This CAFO is a "Final Order."

39. The terms of this CAFO bind U.S. EPA and Respondent and its successors and assigns.

40. Each person signing this CAFO certifies he or she has the authority to sign this CAFO for the party he or she represents and to bind that party to its terms.

41. Each party agrees to bear its own costs and fees, including attorneys' fees, for this action.

42. This CAFO constitutes the entire agreement between the parties.

43. No modification shall be made to this CAFO without written notification to, and written approval of, all parties hereto. No oral modification of this CAFO shall be effective.

44. The effective date of this CAFO is the date U.S. EPA files it with the Regional Hearing Clerk.

**In the Matter of: Five Star Mining, Inc., Petersburg, Indiana.
Docket No. CWA-05-2009-0002
Consent Agreement and Final Order.**

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PROTECTION AGENCY**

RESPONDENT
Five Star Mining, Inc.
Petersburg, Indiana.

Donald R. Blankenberger
Donald R. Blankenberger
President

11-5-08
Date

COMPLAINANT
Water Division
Region 5
United States Environmental Protection Agency

for Thomas Pay
Timothy Henry
Acting Director

11/19/08
Date

**In the Matter of: Five Star Mining, Inc., Petersburg, Indiana.
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FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.



Lynn Buhl
Lynn Buhl
Regional Administrator
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago Illinois 60604-3590

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CERTIFICATE OF SERVICE

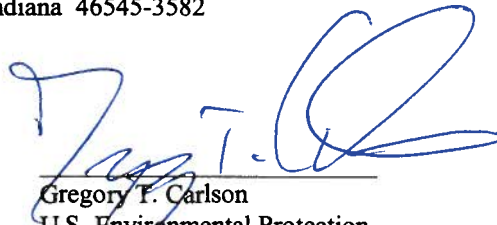
I, Gregory T. Carlson, hereby certify that an original of the combined Complaint and Consent Agreement and Final Order (Docket No. CWA-05-2009-0002) was filed with the Regional Hearing Clerk on January 14, 2009, and that a copy was served by United States Mail, Certified and Postage Prepaid, on the 14th day of January 2009, upon the following:

Mr. Donald R. Blankenberger
Five Star Mining, Inc.
6594 West State Road 56
Petersburg, Indiana 47567-0175

A combined Complaint and Consent Agreement and Final Order copy (Docket No. CWA-05-2009-0002) was served by United States Mail, Certified and Postage Prepaid, on the 14th day of January 2009, upon the following:

Honorable Chief Judge Susan Biro
Chief Administrative Law Judge
Office of Administrative Law Judges (1900L)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Stephen A. Studer, Esq.
Krieg Devault, LLP
520 Park Place Court, Suite 300
Mishawaka, Indiana 46545-3582



Gregory T. Carlson
U.S. Environmental Protection
Agency - Region 5 (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604